

**From:** [Arcaya, Alyssa](#)  
**To:** [Latessa, Sara H \(DEC\)](#); [Lendrum, Jacqueline M \(DEC\)](#)  
**Cc:** [Arvizu, Christy](#); [Coats, Andrea](#); [Saporita, Chris](#)  
**Subject:** CAFO fact sheet language  
**Date:** Monday, August 15, 2016 4:43:19 PM

---

Hi Sara and Jackie,

Thank you for sending revised language to us and apologies for the delay in sending our feedback to you. Below please find our responses below the text you sent in blue. On Attachment C, we do not have any substantive comments, though we do recall suggesting a statement or check box that indicates that the ANMP and the Annual Compliance Report are publically available.

Sara, Christy will also be following up with you separately about a sample ANMP- it appears that you may have tried to send her a message that didn't make it through our system. Once we have a chance to take a look at this, it may help us resolve some issues. With just the ANMP template to go on, it seems that, as an abbreviated version of the CNMP, the ANMP will be necessarily be lacking some of the detail required in a CNMP. This detailed, site-specific information is what constitutes site-specific limitations. If this isn't required in the publically available ANMP, it makes it difficult for farms to be held accountable for those limitations.

We'll also be following up with you with more definitive information about the digester issue, hopefully this week.

I also wanted to touch base with you and Jackie about the potential for another in person meeting to look at a revised draft. You had asked us for a summary of the comments that still remain unresolved, but without a document to look at, we're not really able to provide that with any certainty. Please think about what would be doable on your end and we can discuss.

Finally, I just want to clarify that we reserve final comment on all revisions until we receive a complete proposed permit and have had a chance to review it thoroughly.

Thanks again,

Alyssa

---

Alyssa Arcaya  
Chief, NPDES Section  
Clean Water Division, EPA Region 2  
212- 637-3730

**"Public Participation – Annual Nutrient Management Plan (ANMP):** In order to address the requirements outlined in the *Waterkeeper Alliance, Inc. et al. v. EPA* 399 F3d 486 (2005) ("*Waterkeeper* decision") and the 2012 consolidated federal CAFO Rule, the Department developed a consolidated version of the Comprehensive Nutrient Management Plan (CNMP) termed the Annual Nutrient Management Plan (ANMP). This ANMP creates a workable solution for farmers while complying with the new Rules.

The *Waterkeeper* decision stated that the terms of the nutrient management plans are effluent limitations that are subject to public comment and hearing that must be reviewed and approved by the permitting authority. Eligibility for this permit is contingent on having a CNMP written by a certified planner to meet the technical standards set by United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS). These technical standards set the effluent limitations included in each farm-specific CNMP. The ANMP provides an outline of the farm-specific effluent limitations in a consolidated format to allow for manageable review by

both the public as well as the Department. The public is given opportunity to comment on and request a hearing on the effluent limitations when the general permit is public noticed, and the farm specific elements, when the ANMP is submitted.

The farm-specific ANMP must be submitted with the Notice of Intent for coverage under this permit and the availability of both will be publically noticed and comments received for 30 days. If, at any time throughout the permit term, the individual farm proposes an action that does not meet NRCS standards (ie. the effluent limitations established in the permits) then a revised ANMP must be submitted, made available to the public for comment and an opportunity for hearing provided. Part IV.F. of the permit describes these actions that warrant submission of a revised ANMP.

Although the ANMP meets the minimum requirements outlined in the Waterkeeper decision, it only provides for anticipated compliance. In order to provide reasonable assurance that the anticipated compliance was fulfilled, CAFO owner/operators in NY are required to submit an Annual Compliance Report (ACR) at the end of each year which requires certification by the owner/operator that they complied with the terms of the permit, the farm-specific effluent limitations and provides an opportunity for the owner/operator to outline any changes made to the CNMP throughout the year. This system of “before and after” reporting, provides for transparency of the farms operations and allows for the Department, as well as the public, to gain a more complete picture of compliance.

How is it clear to the public that they can view/obtain the ACRs to get this “before and after” picture, which provides transparency and provides for a more complete picture of compliance? More generally, we suggest that any outside references, including NRCS standards, be accompanied by a link to the appropriate website. In the case of references to site-specific documents like the ACR, DEC should include information about how the public can access these documents.

**2012 CAFO Rule adherence:** The 2012 consolidated federal CAFO Rule requires owners/operators of CAFOs to indicate in their CNMP which nutrient application methodology they are following in order to provide reasonable assurance that there will be appropriate agricultural utilization of nutrients in the manure, litter or process wastewater applied to their land base. Specifically, the Rule requires adherence to either a **Linear Method or a Narrative Method as described in 40 CFR 122.42(e)(1)(viii)**. In NY, these methods are combined to form the NRCS Standard NY 590 which meets this federal requirement and is required to be followed by all permitted CAFOs. The farm-specific field-by-field requirements set by NY590 are described in the ANMP and are available to the public upon request.

The yellow highlighted section references the wrong citation in the Federal CAFO rule. The terms of the nutrient management plan are defined in 122.42(e)(5). The highlighted citation references 9 key elements of the NMP, including establishing protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater. The terms of the nutrient management plan should be made clear to both the permittee and the public, as well as the nutrient application methodology and how it relates to the 2012 Federal CAFO Rule (e.g. linear or narrative approach). As such, the terms of the nutrient management plan should be more clearly explained in the fact sheet. As it is currently drafted, it is not clear how NY590 and the permit clearly explain the linear vs. narrative approach. More generally, because the land application procedures have to be farm-specific in order to be meaningful and enforceable, a reference to general standards like NY590 does not serve as an effective effluent limit.

We also feel that the relationship between NY590 and Cornell's guidelines should be more clearly explained in the fact sheet. The burden should not be on the public to study Cornell's guidelines to understand what's required of a given CAFO.